

AMENDED IN SENATE JANUARY 12, 2004

AMENDED IN ASSEMBLY MAY 29, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 971

Introduced by Assembly Member Correa

February 20, 2003

An act ~~relating to state employees~~ to amend Sections 1789.31, 1789.33, and 1789.35 of the Civil Code, and to amend Sections 22050, 23026, 23057 23100, 23102, and 23104 of the Financial Code, relating to deferred deposit transactions, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 971, as amended, Correa. ~~State employees: memoranda of understanding: state bargaining units ———~~ *Deferred deposit transactions.*

Existing law makes the California Deferred Deposit Transaction Law, except for specified provisions, operative on March 1, 2004, and regulates persons engaged in the business of making or negotiating deferred deposit transactions. Existing law also makes certain provisions of law regulating check cashers inoperative on March 1, 2004.

This bill would extend the dates on which these provisions become operative and inoperative by one year to March 1, 2005. The bill would make related changes.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law provides that if any provision of a memorandum of understanding reached between the state employer and a recognized employee organization representing state civil service employees requires the expenditure of funds, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature in the annual Budget Act.~~

~~This bill would approve provisions of memoranda of understanding entered into between the state employer and unspecified employee organizations that require the expenditure of funds and would provide that the provisions of any memorandum of understanding that require the expenditure of funds shall become effective even if the provisions of the memorandum of understanding are approved by the Legislature in legislation other than the annual Budget Act.~~

~~This bill would provide that provisions of the memoranda of understanding approved by this bill that require the expenditure of funds shall not take effect unless funds for these provisions are specifically appropriated by the Legislature, and would provide that if funds for these provisions are not specifically appropriated by the Legislature, the state employer, and the affected employee organization shall meet and confer to renegotiate the affected provisions.~~

~~Vote: majority $\frac{2}{3}$. Appropriation: no. Fiscal committee: no- yes. State-mandated local program: no.~~

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. The Legislature finds and declares that the~~
- 2 *SECTION 1. Section 1789.31 of the Civil Code, as amended*
- 3 *by Section 2 of Chapter 777 of the Statutes of 2002, is amended to*
- 4 *read:*
- 5 1789.31. (a) As used in this title, a “check casher” means a
- 6 person or entity that for compensation engages, in whole or in part,
- 7 in the business of cashing checks, warrants, drafts, money orders,
- 8 or other commercial paper serving the same purpose. “Check
- 9 casher” does not include a state or federally chartered bank,
- 10 savings association, credit union, or industrial loan company.
- 11 “Check casher” also does not include a retail seller engaged
- 12 primarily in the business of selling consumer goods, including
- 13 consumables, to retail buyers that cashes checks or issues money
- 14 orders for a minimum flat fee not exceeding two dollars (\$2) as a



1 service to its customers that is incidental to its main purpose or
2 business.

3 (b) As used in this title, “deferred deposit” means a transaction
4 whereby the check casher refrains from depositing a personal
5 check written by a customer until a specific date, pursuant to a
6 written agreement, as provided in Section 1789.33.

7 (c) This section shall become inoperative on March 1, ~~2004~~
8 ~~2005~~, and as of January 1, ~~2005~~ 2006, is repealed, unless a later
9 enacted statute that is enacted before January 1, ~~2005~~ 2006, deletes
10 or extends the dates on which it becomes inoperative and is
11 repealed.

12 *SEC. 2. Section 1789.31 of the Civil Code, as added by*
13 *Section 3 of Chapter 777 of the Statutes of 2002, is amended to*
14 *read:*

15 1789.31. (a) As used in this title, a “check casher” means a
16 person or entity that for compensation engages, in whole or in part,
17 in the business of cashing checks, warrants, drafts, money orders,
18 or other commercial paper serving the same purpose. “Check
19 casher” does not include a state or federally chartered bank,
20 savings association, credit union, or industrial loan company.
21 “Check casher” also does not include a retail seller engaged
22 primarily in the business of selling consumer goods, including
23 consumables, to retail buyers that cashes checks or issues money
24 orders for a fee not exceeding two dollars (\$2) as a service to its
25 customers that is incidental to its main purpose or business.

26 (b) This section shall become operative March 1, ~~2004~~ 2005.

27 *SEC. 3. Section 1789.33 of the Civil Code is amended to read:*

28 1789.33. (a) A check casher may defer the deposit of a
29 personal check written by a customer for up to 30 days, pursuant
30 to the provisions of this section. The face amount of the check shall
31 not exceed three hundred dollars (\$300). Each deferred deposit
32 shall be made pursuant to a written agreement that has been signed
33 by the customer and by the check casher or an authorized
34 representative of the check casher. The written agreement shall
35 contain a statement of the total amount of any fees charged for the
36 deferred deposit, expressed both in United States currency and as
37 an annual percentage rate (APR). The written agreement shall
38 authorize the check casher to defer deposit of the personal check
39 until a specific date not later than 30 days from the date the written

1 agreement was signed and executed. The written agreement shall
2 not permit the check casher to accept collateral.

3 (b) A customer who enters into a deferred deposit agreement
4 and offers a personal check to a check casher pursuant to that
5 agreement shall not be subject to any criminal penalty for the
6 failure to comply with the terms of that agreement.

7 (c) This section shall become inoperative on March 1, ~~2004~~
8 ~~2005~~, and as of January 1, ~~2005~~ 2006, is repealed, unless a later
9 enacted statute that is enacted before January 1, ~~2005~~ 2006, deletes
10 or extends the dates on which it becomes inoperative and is
11 repealed.

12 *SEC. 4. Section 1789.35 of the Civil Code, as amended by*
13 *Section 5 of Chapter 777 of the Statutes of 2002, is amended to*
14 *read:*

15 1789.35. (a) A check casher shall not charge a fee for cashing
16 a payroll check or government check in excess of 3 percent if
17 identification is provided by the customer, or 3.5 percent without
18 the provision of identification, of the face amount of the check, or
19 three dollars (\$3), whichever is greater. Identification, for
20 purposes of this section, is limited to a California driver's license,
21 a California identification card, or a valid United States military
22 identification card.

23 (b) A check casher may charge a fee of no more than ten dollars
24 (\$10) to set up an initial account and issue an optional
25 identification card for providing check cashing services. A
26 replacement optional identification card may be issued at a cost not
27 to exceed five dollars (\$5).

28 (c) A check casher shall provide a receipt to the customer for
29 each transaction.

30 (d) Subject to the limitations of Section 1789.33, a check
31 casher may charge a fee for cashing a personal check, as posted
32 pursuant to Section 1789.30, for immediate deposit in an amount
33 not to exceed 12 percent of the face value of the check or for
34 deferred deposit in an amount not to exceed 15 percent of the face
35 value of the check.

36 (e) A check casher shall not enter into an agreement for a
37 deferred deposit with a customer during the period of time that an
38 earlier written agreement for a deferred deposit for the same
39 customer is in effect.

1 (f) A check casher who enters into a deferred deposit agreement
2 and accepts a check passed on insufficient funds, or any assignee
3 of that check casher, shall not be entitled to recover damages in any
4 action brought pursuant to, or governed by, Section 1719.

5 (g) For a transaction pursuant to Section 1789.33, a fee not to
6 exceed fifteen dollars (\$15) may be charged for the return of a
7 dishonored check by a depository institution. The fee may be
8 collected by a check casher who holds a valid permit issued
9 pursuant to Section 1789.37, when acting under the authority of
10 that permit.

11 (h) No amount in excess of the amounts authorized by this
12 section shall be directly or indirectly charged by a check casher
13 pursuant to a deferred deposit agreement.

14 (i) Any person who violates any provision of this section shall
15 be liable for a civil penalty not to exceed two thousand dollars
16 (\$2,000) for each violation, which shall be assessed and recovered
17 in a civil action brought in the name of the people of the State of
18 California by the Attorney General in any court of competent
19 jurisdiction. Any action brought pursuant to this subdivision shall
20 be commenced within four years of the date on which the act or
21 transaction upon which the action is based occurred.

22 (j) A willful violation of this section is a misdemeanor.

23 (k) Any person who is injured by any violation of this section
24 may bring an action for the recovery of damages, an equity
25 proceeding to restrain and enjoin those violations, or both. The
26 amount awarded may be up to three times the damages actually
27 incurred, but in no event less than the amount paid by the aggrieved
28 consumer to a person subject to this section. If the plaintiff
29 prevails, the plaintiff shall be awarded reasonable attorney's fees
30 and costs. If a court determines by clear and convincing evidence
31 that a breach or violation was willful, the court, in its discretion,
32 may award punitive damages in addition to the amounts set forth
33 above.

34 (l) This section shall become inoperative on March 1, ~~2004~~
35 ~~2005~~, and as of January 1, ~~2005~~ ~~2006~~, is repealed, unless a later
36 enacted statute that is enacted before January 1, ~~2005~~ ~~2006~~, deletes
37 or extends the dates on which it becomes inoperative and is
38 repealed.

1 *SEC. 5. Section 1789.35 of the Civil Code, as added by*
2 *Section 6 of Chapter 777 of the Statutes of 2002, is amended to*
3 *read:*

4 1789.35. (a) A check casher shall not charge a fee for cashing
5 a payroll check or government check in excess of 3 percent if
6 identification is provided by the customer, or 3.5 percent without
7 the provision of identification, of the face amount of the check, or
8 three dollars (\$3), whichever is greater. Identification, for
9 purposes of this section, is limited to a California driver's license,
10 a California identification card, or a valid United States military
11 identification card.

12 (b) A check casher may charge a fee of no more than ten dollars
13 (\$10) to set up an initial account and issue an optional
14 identification card for providing check cashing services. A
15 replacement optional identification card may be issued at a cost not
16 to exceed five dollars (\$5).

17 (c) A check casher shall provide a receipt to the customer for
18 each transaction.

19 (d) A check casher may charge a fee for cashing a personal
20 check, as posted pursuant to Section 1789.30, for immediate
21 deposit in an amount not to exceed 12 percent of the face value of
22 the check.

23 (e) Any person who violates any provision of this section shall
24 be liable for a civil penalty not to exceed two thousand dollars
25 (\$2,000) for each violation, which shall be assessed and recovered
26 in a civil action brought in the name of the people of the State of
27 California by the Attorney General in any court of competent
28 jurisdiction. Any action brought pursuant to this subdivision shall
29 be commenced within four years of the date on which the act or
30 transaction upon which the action is based occurred.

31 (f) A willful violation of this section is a misdemeanor.

32 (g) Any person who is injured by any violation of this section
33 may bring an action for the recovery of damages, an equity
34 proceeding to restrain and enjoin those violations, or both. The
35 amount awarded may be up to three times the damages actually
36 incurred, but in no event less than the amount paid by the aggrieved
37 consumer to a person subject to this section. If the plaintiff
38 prevails, the plaintiff shall be awarded reasonable attorney's fees
39 and costs. If a court determines by clear and convincing evidence
40 that a breach or violation was willful, the court, in its discretion,

1 may award punitive damages in addition to the amounts set forth
2 above.

3 (h) This section shall become operative March 1, ~~2004~~ 2005.

4 *SEC. 6. Section 22050 of the Financial Code, as amended by*
5 *Section 8 of Chapter 777 of the Statutes of 2002, is amended to*
6 *read:*

7 22050. (a) This division does not apply to any person doing
8 business under any law of this state or of the United States relating
9 to banks, trust companies, savings and loan associations, insurance
10 premium finance agencies, credit unions, small business
11 investment companies, California business and industrial
12 development corporations, or licensed pawnbrokers.

13 (b) This division does not apply to a broker-dealer acting
14 pursuant to a certificate, then in effect, issued pursuant to Section
15 25211 of the Corporations Code.

16 (c) This division does not apply to a college or university
17 making a loan for the purpose of permitting a person to pursue a
18 program or course of study leading to a degree or certificate.

19 (d) This division does not apply to a check casher who holds a
20 valid permit issued pursuant to Section 1789.37 of the Civil Code
21 when acting under the authority of that permit.

22 (e) This division does not apply to any person who makes no
23 more than one loan in a 12-month period as long as that loan is a
24 commercial loan as defined in Section 22502.

25 (f) This division does not apply to any public corporation as
26 defined in Section 67510 of the Government Code, any public
27 entity other than the state as defined in Section 811.2 of the
28 Government Code, or any agency of any one or more of the
29 foregoing, when making any loan so long as the public
30 corporation, public entity, or agency of any one or more of the
31 foregoing complies with all applicable federal and state laws and
32 regulations.

33 (g) This section shall become inoperative on March 1, ~~2004~~
34 2005, and as of January 1, ~~2005~~ 2006, is repealed, unless a later
35 enacted statute that is enacted before January 1, ~~2005~~ 2006, deletes
36 or extends the dates on which it becomes inoperative and is
37 repealed.

38 *SEC. 7. Section 22050 of the Financial Code, as added by*
39 *Section 9 of Chapter 777 of the Statutes of 2002, is amended to*
40 *read:*

1 22050. (a) This division does not apply to any person doing
2 business under any law of this state or of the United States relating
3 to banks, trust companies, savings and loan associations, insurance
4 premium finance agencies, credit unions, small business
5 investment companies, California business and industrial
6 development corporations, or licensed pawnbrokers.

7 (b) This division does not apply to a check casher who holds a
8 valid permit issued pursuant to Section 1789.37 of the Civil Code
9 when acting under the authority of that permit, and shall not apply
10 to a person holding a valid license issued pursuant to Section
11 23005 of the Financial Code when acting under the authority of
12 that license.

13 (c) This division does not apply to a college or university
14 making a loan for the purpose of permitting a person to pursue a
15 program or course of study leading to a degree or certificate.

16 (d) This division does not apply to a broker-dealer acting
17 pursuant to a certificate then in effect and issued pursuant to
18 Section 25211 of the Corporations Code.

19 (e) This division does not apply to any person who makes no
20 more than one loan in a 12-month period as long as that loan is a
21 commercial loan as defined in Section 22502.

22 (f) This division does not apply to any public corporation as
23 defined in Section 67510 of the Government Code, any public
24 entity other than the state as defined in Section 811.2 of the
25 Government Code, or any agency of any one or more of the
26 foregoing, when making any loan so long as the public
27 corporation, public entity, or agency of any one or more of the
28 foregoing complies with all applicable federal and state laws and
29 regulations.

30 (g) This section shall become operative March 1, ~~2004~~ 2005.

31 *SEC. 8. Section 23026 of the Financial Code is amended to*
32 *read:*

33 23026. On or before March 15 of each year, beginning March
34 ~~2005~~ 2006, each licensee shall file an annual report with the
35 commissioner pursuant to procedures that the commissioner shall
36 establish. The licensee's annual report shall be kept confidential
37 pursuant to Chapter 3.5 (commencing with Section 6250) of
38 Division 7 of Title 1 of the Government Code and any regulations
39 adopted thereunder. The annual consolidated report shall be
40 prepared by the commissioner and made available to the public.

1 For the previous calendar year, these reports shall include the
2 following:

3 (a) The total number and dollar amount of deferred deposit
4 transactions made by the licensee.

5 (b) The total number of individual customers who entered into
6 deferred deposit transactions.

7 (c) The minimum, maximum, and average amount of deferred
8 deposit transactions.

9 (d) The average annual percentage rate of deferred deposits.

10 (e) The average number of days of deferred deposit
11 transactions.

12 (f) The total number and dollar amount of returned checks.

13 (g) The total number and dollar amount of checks recovered.

14 (h) The total number and dollar amount of checks charged off.

15 *SEC. 9. Section 23057 of the Financial Code is amended to*
16 *read:*

17 23057. On December 1, ~~2006~~ 2007, the commissioner shall
18 report to the Governor and the Legislature on its implementation
19 of this division. The report shall include, at a minimum,
20 information regarding the demand for deferred deposit
21 transactions, the growth and trends in the industry, common
22 practices for conducting the business of deferred deposit
23 transactions and any other information the commissioner deems
24 necessary to inform the Governor and the Legislature regarding
25 potential legislation that may be necessary to protect the people of
26 the State of California. The commissioner's recommendations for
27 future action may include, but are not limited to, changes in the
28 fees charged to consumers, specifications regarding the length of
29 time for deferred deposit transactions, maximum amount provided
30 to consumers and the implementation of an installment loan
31 product in lieu of a deferred deposit transaction as described in this
32 division.

33 As the commissioner conducts this study, licensees shall be
34 required to supply all information the commissioner deems
35 necessary. The study shall be made public and may not include any
36 proprietary information.

37 *SEC. 10. Section 23100 of the Financial Code is amended to*
38 *read:*

39 23100. (a) Check cashers that hold a valid permit prior to
40 January 1, 2003, issued pursuant to Section 1789.37 of the Civil

Code, and that have been making deferred deposits prior to January 1, 2003, shall do the following prior to engaging in the business of deferred deposits on or after March 1, ~~2004~~ 2005:

(1) Pay the assessment on or before May 15, 2003, pursuant to the provisions of this division for the 2003–04 fiscal year.

(2) On or before May 15, 2003, submit a license application and pay a license fee pursuant to Article 2 (commencing with Section 23005).

(b) Any person that intends to engage in the business of deferred deposits after March 1, ~~2004~~ 2005, and that holds a check cashing permit from the Attorney General on or before January 2003 and fails to submit a license application or pay a license fee as provided in this subdivision, shall upon the request of the commissioner and applying for a license forfeit to the people of the state a sum of twenty-five dollars (\$25) for every day or part of a day that the submission or payment is delayed or withheld. Applications will be processed in the order of the date received by the commissioner.

(c) The commissioner shall issue a license to a licensee under this division upon receiving payment of the assessment for the 2003–04 fiscal year, the license application, and fee and any additional information the commissioner may require in the application to demonstrate compliance with provisions of this division. The amount collected shall be deposited in the State Corporations Fund and shall be subject to appropriation by the Legislature for the 2003–04 fiscal year.

SEC. 11. Section 23102 of the Financial Code is amended to read:

23102. The deferred deposits made pursuant to a permit issued under Section 1789.37 of the Civil Code prior to March 1, ~~2004~~ 2005, shall be subject to and enforced to the extent valid under Sections 1789.30 to 1789.37, inclusive, of the Civil Code, as if those sections were not repealed. Any regulation, order, or other action adopted, prescribed, taken, or performed by the Department of Justice or by an officer of that department in connection with deferred deposit transactions made prior to March 1, ~~2004~~ 2005, shall continue to apply to those transactions. No suit, action, or other proceeding lawfully commenced by or against the Department of Justice or any other officer of the state in relation to deferred deposit transactions made prior to March 1, ~~2004~~ 2005,

1 shall abate by reason of the transfer of authority concerning
2 deferred deposit transactions to the Department of Corporations
3 pursuant to Section 23071.

4 *SEC. 12. Section 23104 of the Financial Code is amended to*
5 *read:*

6 23104. Except as provided in this article, the provisions of this
7 division shall become effective on January 1, 2003, and shall
8 become operative on March 1, 2004 2005. However, the
9 commissioner shall have the power and authority to implement the
10 provisions of this division prior to March 1, 2004 2005.

11 *SEC. 13. This act is an urgency statute necessary for the*
12 *immediate preservation of the public peace, health, or safety*
13 *within the meaning of Article IV of the Constitution and shall go*
14 *into immediate effect. The facts constituting the necessity are:*

15 *In order for the provisions of this act to become effective as soon*
16 *as possible, it is necessary that this act take effect immediately.*
17 ~~purpose of this act is to approve agreements pursuant to Section~~
18 ~~3517 of the Government Code entered into by the state employer~~
19 ~~and unspecified recognized employee organizations.~~

20 ~~SEC. 2. The provisions of the memoranda of understanding~~
21 ~~prepared pursuant to Section 3517.5 of the Government Code and~~
22 ~~entered into by the state employer and the following employee~~
23 ~~organizations, and that require the expenditure of funds, are~~
24 ~~hereby approved for the purposes of Section 3517.6 of the~~
25 ~~Government Code:~~

26 ~~(a) State Bargaining Unit ____.~~

27 ~~(b) State Bargaining Unit ____.~~

28 ~~SEC. 3. The provisions of the memoranda of understanding~~
29 ~~approved by Section 2 of this act that are scheduled to take effect~~
30 ~~on or after July 1, 2003, and that require the expenditure of funds,~~
31 ~~shall not take effect unless funds for these provisions are~~
32 ~~specifically appropriated by the Legislature. In the event that funds~~
33 ~~for these provisions are not specifically appropriated by the~~
34 ~~Legislature, the state employer and the affected employee~~
35 ~~organization shall meet and confer to renegotiate the affected~~
36 ~~provisions.~~

37 ~~SEC. 4. Notwithstanding Section 3517.6 of the Government~~
38 ~~Code, the provisions of any memorandum of understanding that~~
39 ~~require the expenditure of funds shall become effective even if the~~

- 1 ~~provisions of the memorandum of understanding are approved by~~
- 2 ~~the Legislature in legislation other than the annual Budget Act.~~

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